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May 7, 2013

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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE – PROPOSED PRISON POPULATION REDUCTION PLAN

Executive Summary

This memorandum is to provide the Board a report on Governor Brown's proposed prison population reduction plan submitted to the Federal three-judge panel on May 2, 2013 to further reduce the State prison population.

Background

In August 2009, the Federal three-judge panel overseeing several court cases against the State and California Department of Corrections & Rehabilitation (CDCR) found that overcrowding conditions in the California prison system prevented the provision of adequate levels of mental health and health care services which were deemed to be unconstitutional. The three-judge panel ordered the State to reduce the prison population to 137.5% of prison design capacity in the State's 33 institutions by June 2013. The State appealed that ruling to the United States Supreme Court, but in May 2011, the Supreme Court upheld the lower court ruling and ordered the State to reduce the prison population.

As a result of the Supreme Court's decision, the Governor and the Legislature enacted the 2011 Public Safety Realignment which included significant changes to sentencing laws and shifted the responsibility for the supervision and incarceration of large numbers of criminal offenders from the State to counties.

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Since implementation of 2011 Public Safety Realignment in October 2011, the State prison population has been reduced by approximately 25,000 inmates. However, the current prison population is approximately 119,000 inmates, or about 149% of design capacity, and the Brown Administration and CDCR have conceded, given population projections, that they will not be able to meet the 137.5% threshold without further population reduction measures.

In January 2013, the State filed several motions with the three-judge panel requesting that the judges terminate a portion of the litigation and vacate or modify the population reduction order. The judges rejected the State's motions but extended the date by which the State had to meet the population threshold to December 31, 2013. The three-judge panel also ordered the State to submit a revised population reduction plan no later than May 2, 2013.

In submitting the State's proposal to the three-judge panel, Governor Brown reiterated his strong belief that the State had achieved considerable and adequate progress in reducing the prison population and improving the provision of mental health and medical care within the State's prison system. The State's plan underscores that additional population reduction measures could jeopardize public safety and undermine the achievements made with implementation of 2011 Public Safety Realignment.

The State's plan also indicates that the Brown Administration does not have the authority to implement many of the proposed measures which would require legislative approval, in some instances by two-thirds of the Legislature, to change existing laws and the California Constitution. Finally, the Governor indicated that the State will continue to pursue additional legal strategies including another appeal to the U.S. Supreme Court.

Major Components of the State's Prison Population Reduction Plan

The State's proposed prison reduction plan contains three main components as follows:

1. **Expanding Capacity.** The State's plan proposes to increase the number of beds available through the following mechanisms:
 - a. **New construction:** The California Health Care Facility in Stockton is scheduled to open in July 2013. This facility will add 1,722 beds to the system.

- b. **Expand fire camp eligibility:** The State has identified an additional 1,250 lower-level inmates that are eligible for placement in fire camps by December 31, 2013.
 - c. **Slow the return of out-of-State inmates:** The State has proposed to slow the planned return of inmates housed in the four out-of-State private prisons which will add 4,065 beds by June 2014. This measure would require legislative approval and appropriation of funding.
 - d. **Lease available county jail space:** The State proposes leasing jail capacity from counties with available beds which could add approximately 1,600 beds. This measure would require legislative approval and appropriation of funding.
 - e. **Contract with private prisons:** As a contingency measure, the State proposes to lease available private prison space in California. Currently, California private prisons are not rated to house prison inmates and would have to be retrofitted. This would require legislative approval and appropriation of funding. It is unclear how many beds would be available under this option which would not be achieved until 2014 at the earliest.
2. **Expansion of Prison Credits.** The State's plan proposes to expand inmate credit-earning capacity for several populations:
- a. **Extend 2-for-1 credit to minimum custody inmates:** Currently, only inmates assigned to the fire camps earn 2-for-1 credits (two days credit for every one day served). This proposal would allow inmates assigned to minimum custody facilities to earn those credits. This measure would require two-thirds vote of the Legislature and would reduce the population by 148 inmates by December 31, 2013.
 - b. **Allow non-violent second-strike offenders to earn "milestone completion" credits:** The State proposes to amend existing law to allow non-violent second-strike inmates to earn additional completion prison credits. This measure would require two-thirds vote of the Legislature and would reduce the population by 62 inmates by December 31, 2013.
 - c. **Increase credit-earning limit for non-violent second strike offenders:** The State proposes to remove the 20-percent restriction on credit-earning for non-violent second-strike offenders and increase it to 34-percent. This

measure would require two-thirds vote of the Legislature and would reduce the population by 37 inmates by December 31, 2013.

3. **Expansion of Medical Parole and Parole for Elderly Inmates.** The State's plan includes proposals to expand the medical parole program and establish a process by which certain elderly inmates could be eligible for parole.

- a. **Medical Parole:** The State proposes changes to existing law related to medical parole to increase the number of inmates eligible for release. This would include removing the exclusion that the medical condition had to exist at the time of sentencing and to include those who suffer from a significant and permanent condition, disease or syndrome that leads to physical or cognitive incapacitation. This measure would require legislative approval and would reduce the population by 150 inmates by December 31, 2013.
- b. **Elderly Inmates:** The State's plan proposes changes to existing law to allow elderly inmates who have served lengthy prison terms and score as low-risk to recidivate to be eligible for parole. This would include inmates convicted of serious and violent crimes and would require legislative approval. This measure would reduce the population by 250 inmates by December 31, 2013.

Conclusion and Next Steps

The State's plan rejects population reduction measures to realign other offender populations to counties, including retaining inmates bound for State prison with nine months or less remaining on their sentence in county jails. The Brown Administration characterizes those proposals as unsound prison policies which would jeopardize public safety and place undue pressure on local jurisdictions already dealing with the 2011 Public Safety Realignment.

The State's plan will be reviewed by the three-judge panel which is expected to respond quickly given the need for legislative approval for many of the measures outlined above. It is unclear at this time how the three-judge panel will respond and if it will order the State to pursue additional population reduction measures other than those included in the May 2, 2013 plan. Finally, members of the Legislature have already publicly commented that they would not be inclined to pass most of the measures outlined in the Governor's plan nor would they be open to any additional realignment of offenders to counties and local government.

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We will continue to work with County Counsel and affected County departments to monitor the situation and will report on the three-judge panel's response to the State's plan once it is issued.

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